

**ATTORNEY GENERAL AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bill Wright**

**This act modifies provisions governing the attorney general and attorneys employed by the attorney general's office. This act eliminates career service status as an option for attorneys in the attorney general's office after July 1, 2002, provides for a classification plan and pay plan for noncareer service status attorneys, and authorizes existing career service status attorneys to voluntarily convert to noncareer service status. This act renumbers and amends sections relating to the attorney general and makes technical corrections.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**31A-2-108**, as last amended by Chapter 344, Laws of Utah 1995

**34A-5-106**, as last amended by Chapter 161, Laws of Utah 1999

**62A-4a-202.6**, as last amended by Chapter 58, Laws of Utah 2001

**63-30-35**, as last amended by Chapter 97, Laws of Utah 1990

ENACTS:

**67-5-204**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**67-5-101**, (Renumbered from 67-5-1, as last amended by Chapters 212 and 316, Laws of Utah 2000)

**67-5-102**, (Renumbered from 67-5-2, Utah Code Annotated 1953)

**67-5-103**, (Renumbered from 67-5-3, as last amended by Chapter 76, Laws of Utah 1982)

**67-5-104**, (Renumbered from 67-5-4, as enacted by Chapter 186, Laws of Utah 1973)

**67-5-105**, (Renumbered from 67-5-5, as last amended by Chapter 76, Laws of Utah 1982)

**67-5-106**, (Renumbered from 67-5-15, as last amended by Chapter 4, Laws of Utah 1992, Third Special Session)



28       **67-5-107**, (Renumbered from 67-5-16, as enacted by Chapter 274, Laws of Utah 1998)

29       **67-5-108**, (Renumbered from 67-5-17, as enacted by Chapter 212, Laws of Utah 2000)

30       **67-5-201**, (Renumbered from 67-5-6, as enacted by Chapter 185, Laws of Utah 1973)

31       **67-5-202**, (Renumbered from 67-5-7, as last amended by Chapter 122, Laws of Utah 1988)

32       **67-5-203**, (Renumbered from 67-5-8, as last amended by Chapter 203, Laws of Utah 1985)

33       **67-5-205**, (Renumbered from 67-5-9, as last amended by Chapter 122, Laws of Utah 1988)

34       **67-5-206**, (Renumbered from 67-5-12, as last amended by Chapter 191, Laws of Utah

35 1989)

36       **67-5-207**, (Renumbered from 67-5-13, as last amended by Chapter 203, Laws of Utah

37 1985)

38       **67-5-301**, (Renumbered from 67-5-18, as last amended by Chapter 315, Laws of Utah

39 2001)

40 REPEALS:

41       **67-5-11**, as last amended by Chapter 92, Laws of Utah 1987

42 *Be it enacted by the Legislature of the state of Utah:*

43       Section 1. Section **31A-2-108** is amended to read:

44       **31A-2-108. Legal services.**

45       (1) Except as provided in Subsection (4), the commissioner shall call upon the attorney  
46 general for the legal counsel and assistance necessary to enforce the provisions of this title. Upon  
47 the commissioner's request, or upon the attorney general's own initiative, the attorney general may  
48 hire special legal counsel under Section [~~67-5-5~~] 67-5-105 to represent the Insurance Department.

49       (2) Upon the commissioner's request, or upon the commissioner's own initiative, the  
50 attorney general may aid in any investigation, hearing, or other procedure under this title and may  
51 institute, prosecute, and defend proceedings relating to the enforcement or interpretation of this  
52 title, including any proceeding to which the state, or the commissioner or any employee of the  
53 department in an official capacity, is a party or is interested.

54       (3) The commissioner may refer such evidence as is available concerning violations of this  
55 title or of any rule or order under this title to the proper county attorney or district attorney, who  
56 may, with or without this reference, institute the appropriate criminal proceedings.

57       (4) For proceedings authorized by Title 31A, Chapter 27, Insurers Rehabilitation and  
58 Liquidation, the commissioner may employ on a contract basis legal counsel other than the

attorney general, with the fees, costs, and expenses of the counsel and the attorney general being a class one administrative expense under Section 31A-27-335.

Section 2. Section **34A-5-106** is amended to read:

**34A-5-106. Discriminatory or unfair employment practices -- Permitted practices.**

(1) It is a discriminatory or prohibited employment practice to take any action described in Subsections (1)(a) through (f).

(a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate any person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, because of:

(A) race;

(B) color;

(C) sex;

(D) pregnancy, childbirth, or pregnancy-related conditions;

(E) age, if the individual is 40 years of age or older;

(F) religion;

(G) national origin; or

(H) disability.

(ii) An applicant or candidate for any job or position may not be considered "otherwise qualified," unless the applicant or candidate possesses the education, training, ability, moral character, integrity, disposition to work, adherence to reasonable rules and regulations, and other job related qualifications required by an employer for any particular job, job classification, or position to be filled or created.

(iii) (A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.

(B) Notwithstanding Subsection (1)(a)(iii)(A):

(I) nothing in this chapter prevents increases in pay as a result of longevity with the employer, if the salary increases are uniformly applied and available to all employees on a substantially proportional basis; and

(II) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or

benefits if the employee is eligible for those payments.

(b) An employment agency may not:

(i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:

(A) race;

(B) color;

(C) sex;

(D) pregnancy, childbirth, or pregnancy-related conditions;

(E) religion;

(F) national origin;

(G) age, if the individual is 40 years of age or older; or

(H) disability;

(ii) comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:

(A) race;

(B) color;

(C) sex;

(D) pregnancy, childbirth, or pregnancy-related conditions;

(E) religion;

(F) national origin;

(G) age, if the individual is 40 years of age or older; or

(H) disability.

(c) A labor organization may not exclude any individual otherwise qualified from full membership rights in the labor organization, expel the individual from membership in the labor organization, or otherwise discriminate against or harass any of its members in full employment of work opportunity, or representation, because of:

(i) race;

(ii) sex;

(iii) pregnancy, childbirth, or pregnancy-related conditions;

(iv) religion;

(v) national origin;

(vi) age, if the individual is 40 years of age or older; or

(vii) disability.

(d) Unless based upon a bona fide occupational qualification, or required by, and given to, an agency of government for security reasons, an employer, employment agency, or labor organization may not print, or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly:

(i) any limitation, specification, or discrimination as to:

(A) race;

(B) color;

(C) religion;

(D) sex;

(E) pregnancy, childbirth, or pregnancy-related conditions;

(F) national origin;

(G) age, if the individual is 40 years of age or older; or

(H) disability;

(ii) the intent to make any limitation, specification, or discrimination described in Subsection (1)(d)(i).

(e) A person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof, may not:

(i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;

(ii) obstruct or prevent any person from complying with this chapter, or any order issued under it; or

(iii) attempt, either directly or indirectly, to commit any act prohibited in this section.

(f) An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job training programs, instruction, training, or retraining programs may not:

(i) deny to, or withhold from, any qualified person, the right to be admitted to, or

participate in any apprenticeship training program, on-the-job training program, or other occupational instruction, training or retraining program because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; or
- (H) disability;

(ii) discriminate against or harass any qualified person in that person's pursuit of such programs, or to discriminate against such a person in the terms, conditions, or privileges of such programs, because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; or
- (H) disability; or

(iii) print, publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer, or membership in or any classification or referral for employment by a labor organization, or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification, or discrimination based on race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national origin, age, if the individual is 40 years of age or older, or disability except that a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on race, color, religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or disability when religion, race, color, sex, age, national origin, or disability is a bona fide occupational qualification for employment.

(2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to prevent:

(a) the termination of employment of an individual who is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;

(b) the variance of insurance premiums, of coverage on account of age; or

(c) a restriction on the activities of individuals licensed by the liquor authority with respect to persons under 21 years of age.

(3) (a) It is not a discriminatory or prohibited employment practice:

(i) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or disability in those certain instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(ii) for a school, college, university, or other educational institution to hire and employ employees of a particular religion if the school, college, university, or other educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion;

(iii) for an employer to give preference in employment to:

(A) the employer's:

(I) spouse;

(II) child; or

(III) son-in-law or daughter-in-law;

(B) any person for whom the employer is or would be liable to furnish financial support if those persons were unemployed;

(C) any person to whom the employer during the preceding six months has furnished more than ~~[one-half]~~ 1/2 of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or

(D) any person whose education or training was substantially financed by the employer for a period of two years or more.

(b) Nothing in this chapter applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which preferential treatment is given to any individual because that individual is a native American Indian living on or near an Indian reservation.

(c) Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, age, national origin, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, or disability employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, or disability in any community or county or in the available work force in any community or county.

(4) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

(5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, a person may not be subject to involuntary termination or retirement from employment on the basis of age alone, if the individual is 40 years of age or older, except:

(a) under Subsection (6);

(b) under Section [~~67-5-8~~] 67-5-203; and

(c) when age is a bona fide occupational qualification.

(6) Nothing in this section prohibits compulsory retirement of an employee who has attained at least 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if:

(a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from

the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and

(b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

Section 3. Section **62A-4a-202.6** is amended to read:

**62A-4a-202.6. Child protective services investigators within attorney general's office -- Authority.**

(1) (a) Pursuant to Section [~~67-5-16~~] 67-5-107 the attorney general may employ, with the consent of the division, child protective services investigators to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) (i) Under the direction of the Board of Child and Family Services, the division shall, in accordance with Subsection 62A-4a-409(5), contract with an independent child protective service investigator to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(ii) The executive director of the department shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(b)(i).

(2) The investigators described in Subsection (1) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division;

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an

allegation of educational neglect;

(e) enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect; and

(f) take a child into protective custody, and deliver the child to a law enforcement officer, or to the division. Control and jurisdiction over the child shall be determined by the provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a, Juvenile Courts, and as otherwise provided by law.

Section 4. Section **63-30-35** is amended to read:

**63-30-35. Expenses of attorney general, general counsel for state judiciary, and general counsel for the Legislature in representing the state, its branches, members, or employees.**

(1) (a) After consultation with appropriate state agencies, the state risk manager shall provide a comprehensive liability plan, with limits not lower than those set forth in Section 63-30-34, that will protect the state and its indemnified employees from claims and liability.

(b) The risk manager shall establish deductibles and maximum limits of coverage in consultation with the executive director of the Department of Administrative Services.

(2) (a) The Office of the Attorney General has primary responsibility to provide legal representation to the judicial, executive, and legislative branches of state government in cases where Risk Management Fund coverage applies.

(b) When the attorney general has primary responsibility to provide legal representation to the judicial or legislative branches, the attorney general shall consult with the general counsel for the state judiciary and with the general counsel for the Legislature, to solicit their assistance in defending their respective branch, and in determining strategy and making decisions concerning the disposition of those claims. The decision for settlement of monetary claims in those cases, however, lies with the attorney general and the state risk manager.

(3) (a) If the Judicial Council, after consultation with the general counsel for the state judiciary, determines that the Office of the Attorney General cannot adequately defend the state judiciary, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Judicial Council may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the state judiciary undertakes independent legal

representation of the state judiciary, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the state judiciary elects to be represented by its own counsel under this section, the decision for settlement of claims against the state judiciary, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the state judiciary and the state risk manager.

(4) (a) If the Legislative Management Committee, after consultation with general counsel for the Legislature, determines that the Office of the Attorney General cannot adequately defend the legislative branch, its members, or employees because of a conflict of interest, separation of powers concerns, or other political or legal differences, the Legislative Management Committee may direct its general counsel to separately represent and defend it.

(b) If the general counsel for the Legislature undertakes independent legal representation of the Legislature, its members, or employees, the general counsel shall notify the state risk manager and the attorney general in writing before undertaking that representation.

(c) If the legislative branch elects to be represented by its own counsel under this section, the decision for settlement of claims against the legislative branch, its members, or employees, where Risk Management Fund coverage applies, lies with the general counsel for the Legislature and the state risk manager.

(5) (a) Notwithstanding the provisions of Section [~~67-5-3~~] 67-5-103 or any other provision of this [~~code~~] title, the attorney general, the general counsel for the state judiciary, and the general counsel for the Legislature may bill the Department of Administrative Services for all costs and legal fees expended by their respective offices, including attorneys' and secretarial salaries, in representing the state or any indemnified employee against any claim for which the Risk Management Fund may be liable and in advising state agencies and employees regarding any of those claims.

(b) The risk manager shall draw funds from the Risk Management Fund for this purpose.

Section 5. Section **67-5-101**, which is renumbered from Section 67-5-1 is renumbered and amended to read:

#### **Part 1. Powers and Duties**

**[~~67-5-1~~].      67-5-101. General duties.**

The attorney general shall:

338 (1) perform all duties in a manner consistent with the attorney-client relationship under  
339 Section ~~[67-5-17]~~ 67-5-108;

340 (2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and  
341 the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all  
342 causes to which the state, or any officer, board, or commission of the state in an official capacity  
343 is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

344 (3) after judgment on any cause referred to in Subsection (2), direct the issuance of process  
345 as necessary to execute the judgment;

346 (4) account for, and pay over to the proper officer, all moneys that come into the attorney  
347 general's possession that belong to the state;

348 (5) keep a file of all cases in which the attorney general is required to appear, including  
349 any documents and papers showing the court in which the cases have been instituted and tried, and  
350 whether they are civil or criminal, and:

351 (a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to  
352 judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not  
353 satisfied, the return of the sheriff;

354 (b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings,  
355 and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the  
356 sentence has been executed, if not executed, of the reason of the delay or prevention; and

357 (c) deliver this information to the attorney general's successor in office;

358 (6) exercise supervisory powers over the district and county attorneys of the state in all  
359 matters pertaining to the duties of their offices, and from time to time require of them reports of  
360 the condition of public business entrusted to their charge;

361 (7) give the attorney general's opinion in writing and without fee to the Legislature or  
362 either house, and to any state officer, board, or commission, and to any county attorney or district  
363 attorney, when required, upon any question of law relating to their respective offices;

364 (8) when required by the public service or directed by the governor, assist any district or  
365 county attorney in the discharge of his duties;

366 (9) purchase in the name of the state, under the direction of the state Board of Examiners,  
367 any property offered for sale under execution issued upon judgments in favor of or for the use of  
368 the state, and enter satisfaction in whole or in part of the judgments as the consideration of the

purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4, Constitutional Defense Council;

(17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims

Act, in accordance with Section 26-20-13; and

(18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at health care facilities that receive payments under the state Medicaid program.

Section 6. Section **67-5-102**, which is renumbered from Section 67-5-2 is renumbered and amended to read:

**[67-5-2]. 67-5-102. Official bond.**

(1) The attorney general shall give to the state treasurer a [surety-company] surety bond in the sum of \$5,000[;][ ~~the premium of said~~].

(2) The bond premium shall be paid by the state.

Section 7. Section **67-5-103**, which is renumbered from Section 67-5-3 is renumbered and amended to read:

**[67-5-3]. 67-5-103. Performance of legal services for agencies -- Billing --**  
**"Agency" defined.**

(1) As used in this section, "state agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the state government of Utah.

(2) The attorney general may assign his legal assistants to perform legal services for any state agency [~~of state government. He~~].

(3) The attorney general shall bill that state agency for the legal services performed, if [~~(1)~~]:

(a) the state agency [~~so billed~~] receives federal funds to pay for the legal services rendered[;]; or [~~if (2)~~]

(b) the state agency collects funds from any other source in the form of fees, costs, interest, fines, penalties, forfeitures, or other proceeds reserved or designated for the payment of legal fees sufficient to pay for all or a portion of the legal [~~services rendered; however, the~~] fees assessed by the attorney general's office.

(4) A state agency may deduct any unreimbursed costs and expenses incurred by the agency in connection with the legal services [~~rendered. As used in this act "agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the state government of Utah.~~] provided by the attorney general's office.

Section 8. Section **67-5-104**, which is renumbered from Section 67-5-4 is renumbered and

431 amended to read:

432 ~~[67-5-4].~~ **67-5-104. Interaccount billings included in budget -- Payment of staff**  
433 **members.**

434 The attorney general shall:

435 (1) include ~~[in his annual budget]~~ all interaccount billings in his annual budget; and

436 (2) pay ~~[directly out of his funds]~~ all members of his staff directly out of his funds, whether  
437 that staff is housed in his offices or not.

438 Section 9. Section **67-5-105**, which is renumbered from Section 67-5-5 is renumbered and  
439 amended to read:

440 ~~[67-5-5].~~ **67-5-105. Hiring of legal counsel for agencies -- Costs.**

441 Except where specifically authorized by the Utah Constitution, or statutes, no agency shall  
442 hire legal counsel, and the attorney general alone shall have the sole right to hire legal counsel for  
443 each such agency. Where the Legislature has provided by statute for separate agency counsel, no  
444 such counsel may act as an assistant attorney general nor as a special assistant attorney general  
445 unless the attorney general shall so authorize. Unless he hires such legal counsel from outside his  
446 office, the attorney general shall remain the sole legal counsel for that agency. If outside counsel  
447 is hired for an agency, then the costs of any services to be rendered by this counsel shall be  
448 approved by the attorney general before these costs are incurred. The attorney general shall  
449 approve all billing statements from outside counsel and shall pay the full costs of this counsel  
450 unless the agency by legislative appropriation or in the form of costs, fees, fines, penalties,  
451 forfeitures, or proceeds reserved or designated for the payment of legal fees ~~[receives]~~ received  
452 from any other source the equivalent cost or a portion thereof, in which case the attorney general  
453 may bill the agency for the services; provided, the agency may deduct any unreimbursed costs and  
454 expenses incurred by the agency in connection with the legal service rendered.

455 Section 10. Section **67-5-106**, which is renumbered from Section 67-5-15 is renumbered  
456 and amended to read:

457 ~~[67-5-15].~~ **67-5-106. Records of the attorney general.**

458 (1) A record provided to the Office of the Attorney General by a client governmental entity  
459 shall be considered a record of the client governmental entity for purposes of Title 63, Chapter 2,  
460 Government Records Access and Management Act, if the client governmental entity retains a copy  
461 of the record.

(2) Notwithstanding Subsection 63-2-201(5), records may be exchanged between the Office of the Attorney General and a client governmental entity, without meeting the requirements of Section 63-2-206 provided that they are used only for the purpose of representing the client governmental entity.

Section 11. Section **67-5-107**, which is renumbered from Section 67-5-16 is renumbered and amended to read:

**[67-5-16]. 67-5-107. Child protective services investigators within attorney general's office -- Authority.**

~~[The attorney general may employ, with]~~

(1) With the consent of the Division of Child and Family Services within the Department of Human Services, and in accordance with Section 62A-4a-202.6, the attorney general may employ child protective services investigators to investigate alleged instances of abuse or neglect of a child that occur while a child is in the custody of the Division of Child and Family Services.

(2) Those investigators may also investigate reports of abuse or neglect of a child by an employee of the Department of Human Services, or involving a person or entity licensed to provide substitute care for children in the custody of the Division of Child and Family Services.

Section 12. Section **67-5-108**, which is renumbered from Section 67-5-17 is renumbered and amended to read:

**[67-5-17]. 67-5-108. Attorney-client relationship.**

(1) When representing the governor, lieutenant governor, auditor, or treasurer, or when representing an agency under the supervision of any of those officers, the attorney general shall:

(a) keep the officer or the officer's designee reasonably informed about the status of a matter and promptly comply with reasonable requests for information;

(b) explain a matter to the extent reasonably necessary to enable the officer or the officer's designee to make informed decisions regarding the representation;

(c) abide by the officer's or designee's decisions concerning the objectives of the representation and consult with the officer or designee as to the means by which they are to be pursued; and

(d) jointly by agreement, establish protocols with the officer to facilitate communications and working relationships with the officer or agencies under the officer's supervision.

(2) Nothing in Subsection (1) modifies or supercedes any independent legal authority

granted specifically by statute to the attorney general.

(3) When the attorney general institutes or maintains a civil enforcement action on behalf of the state of Utah that is not covered under Subsection (1), the attorney general shall:

(a) fully advise the governor, as the officer in whom the executive authority of the state is vested, before instituting the action, entering into a settlement or consent decree, or taking an appeal; and

(b) keep the governor reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

(4) In a civil action not covered under Subsection (1) or (3), the attorney general shall:

(a) keep the governor reasonably informed about the status of the matter and promptly comply with reasonable requests for information;

(b) explain the matter to the extent reasonably necessary to enable the governor to make informed decisions regarding the representation; and

(c) abide by the governor's decisions concerning the objectives of the representation and consult with the governor as to the means by which they are to be pursued.

(5) The governor may appear in any civil legal action involving the state and appoint legal counsel to advise or appear on behalf of the governor. The court shall allow the governor's appearance.

Section 13. Section **67-5-201**, which is renumbered from Section 67-5-6 is renumbered and amended to read:

**Part 2. Career Service Act for Attorneys Employed by the Attorney General**

**~~[67-5-6].~~      67-5-201. Attorney General Career Service Act -- Citation.**

This ~~[act shall be]~~ part is known ~~[and may be cited]~~ as the "Career Service Act for Attorneys Employed by the Attorney General ~~[Career Service Act]~~."

Section 14. Section **67-5-202**, which is renumbered from Section 67-5-7 is renumbered and amended to read:

**~~[67-5-7].~~      67-5-202. Establishment of career service system.**

~~[(1) The purpose of this chapter is to establish a career service system for attorneys employed by the Office of the Attorney General that will attract and retain attorneys of proven ability and experience who will devote their full time to the service of the state.]~~

~~[(2)]~~ The Office of the Attorney General may adopt rules necessary to implement this

chapter, including personnel and work rules different from those promulgated by the Department of Human Resource Management.

Section 15. Section **67-5-203**, which is renumbered from Section 67-5-8 is renumbered and amended to read:

**[67-5-8]. 67-5-203. Eligibility for career service status.**

(1) (a) The attorney general has sole authority to determine who may be employed with the attorney general's office. ~~[No]~~

(b) An attorney employed by the state or any of its departments or agencies ~~[has]~~ does not have any claim or right to a position in the attorney general's office ~~[by virtue]~~ because of that employment.

~~[(2) An attorney employed by the attorney general's office shall be placed in a career service status if:]~~

~~[(a) the attorney is a member in good standing of the Utah State Bar Association; and]~~

~~[(b) the attorney has been employed by the attorney general's office as an attorney for a probationary period of no more than one year except as provided in Subsection (3), but in no event less than six months. No]~~

(2) (i) On and after July 1, 2002, the attorney general and the attorney general's office may not place any attorney employed by the attorney general's office in career service status.

(ii) Attorneys not in career service status are at-will employees and shall be governed by the classification and pay plans established under Section 67-5-204.

(b) Except as provided in Subsection (2)(c), an attorney now employed by the attorney general's office in career service may not be terminated under this chapter except for cause.

~~[(3) The attorney general shall determine whether an attorney should be granted career service status. If, at the end of the probationary period established under Subsection (2), the attorney general determines that an attorney should be granted career service status, the attorney general shall notify the attorney in writing of that decision and place a copy of the notification in the attorney's personnel file. If the attorney general determines that career service status should not be granted, the attorney general may either terminate the attorney or extend the probationary period for a period not to exceed one year. The attorney general shall notify the attorney in writing of that decision and place a copy of the notification in the attorney's personnel file. An attorney terminated under this section has no appeal rights under this chapter.]~~

(c) An attorney now employed by the attorney general's office in career service may voluntarily abandon the attorney's career service status and convert to at-will status by informing the attorney general of that intent in writing.

~~[(4)]~~ (3) (a) Attorneys in career service status under this chapter shall retire upon attaining the age of 70 years. ~~[Attorneys]~~

(b) The attorney general may employ attorneys required to retire under this section ~~[may be employed by the attorney general]~~ after their retirement as special assistant attorneys general.

(c) Any attorney employed in this capacity is an at-will employee, not in career service status and is subject to termination as any other attorney employed by the attorney general who is not in a career service status.

Section 16. Section **67-5-204** is enacted to read:

**67-5-204. Classification and pay plans for attorneys not in career service status.**

The attorney general shall, in consultation with the Department of Human Resource Management, develop a classification plan and a pay plan for at-will attorneys who are not in career service status.

Section 17. Section **67-5-205**, which is renumbered from Section 67-5-9 is renumbered and amended to read:

~~[67-5-9].~~ **67-5-205. Reassignment of career status attorneys -- Additional compensation for managerial assignments -- Employment of special assistant attorneys general -- Termination of attorneys -- Salary increases.**

~~[This chapter does not affect the authority of the attorney general to:]~~

(1) (a) The attorney general may assign and reassign attorneys in a career status to different positions on his staff. ~~[The]~~

(b) Except as provided in Subsections (1)(c) and (2), the attorney general may not decrease the salary of an attorney reassigned to a different position ~~[shall not be decreased by reason]~~ because of reassignment~~[; except that if].~~

(c) If the attorney reassigned occupies the position of deputy attorney general, the attorney general may reduce that attorney's salary ~~[may be reduced]~~ by not more than 15% upon the assignment to a different position~~[;].~~

(2) ~~[develop,]~~ (a) The attorney general shall, with the assistance of the Department of Human Resource Management, develop a plan for additional compensation for career status

attorneys who accept managerial assignments within the office. ~~[The provisions of Subsection (1) notwithstanding, the]~~

(b) ~~The~~ attorney general may discontinue any additional compensation ~~[if]~~ when the attorney no longer holds a managerial assignment.

(c) Additional compensation provided under this section shall be determined by the attorney general pursuant to the plan developed by the Office of the Attorney General. ~~[At such time as]~~

(d) When the attorney no longer holds a managerial assignment, and the attorney general decides to discontinue ~~[any]~~ the additional compensation, the reduction may not place the attorney at a salary below where the attorney would be through normal salary increases if the attorney had not been in a managerial position~~;~~.

(3) The attorney general may:

~~[(3)]~~ (a) employ special assistant attorneys general, who ~~[shall]~~ are not ~~[be]~~ subject to this chapter, to represent the state in particular lawsuits or to handle particular legal matters for the state;

~~[(4)]~~ (b) terminate the employment of any attorney employed by the Office of the Attorney General who is not in a career service status; and

~~[(5)]~~ (c) establish the salary or determine salary increases of any attorney under this chapter.

Section 18. Section **67-5-206**, which is renumbered from Section 67-5-12 is renumbered and amended to read:

**~~[67-5-12].~~     67-5-206. Dismissal of career status attorneys -- Causes -- Procedure -- Retention roster -- Reappointment register.**

(1) (a) Attorneys in a career status may be dismissed only:

(i) to advance the good of public service;

(ii) where funds have expired or work no longer exists; or

(iii) for causes such as dishonesty, inefficiency, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.

(b) Attorneys in career status may not be dismissed for reasons of race, national origin, religion, or political affiliation.

(2) Except in aggravated cases of misconduct, no attorney in a career status may be

demoted or dismissed without the following procedures:

(a) The attorney general shall notify the attorney of the reasons for demotion or dismissal.

(b) The attorney shall have an opportunity to reply and have the reply considered by the attorney general.

(c) The attorney shall have an opportunity to be heard by the attorney general or his designated representatives.

(d) Following a hearing, an attorney may be demoted or dismissed if the attorney general finds adequate reason.

(e) If the attorney general finds that retention of an attorney would endanger the peace and safety of others or pose a grave threat to the public interest, the attorney may be summarily suspended pending administrative hearings and a review by the Career Service Review Board.

(3) (a) An attorney in a career status who is aggrieved by a decision of the attorney general to either dismiss or demote may appeal the decision to the Career Service Review Board or its hearing officers by following the procedures in Title 67, Chapter 19a, Grievance and Appeal Procedures.

(b) Matters other than dismissal or demotion may be appealed to and reviewed by the attorney general or a designated representative whose decision is final with no right of appeal to the Career Service Review Board or its hearing officers.

(4) Disciplinary actions shall be supported by credible evidence, but the normal rules of evidence in courts of law do not apply in hearings before the attorney general or the Career Service Review Board or its hearing officers.

(5) (a) Reductions in force required by ~~[reinstatement of an attorney under Section 67-5-11,]~~ inadequate funds, change of workload, or lack of work shall be governed by a retention roster to be maintained by the director of the Department of Human Resource Management and the requirements of this Subsection (5).

~~[(b) Attorneys not in a career status shall be separated before any attorney in a career status.]~~

~~[(c)]~~ (b) Retention points for each attorney in a career status shall be based on his seniority in service as an attorney in the Office of the Attorney General, including any military service fulfilled subsequent to his original appointment.

~~[(d)]~~ (c) Attorneys in career status shall be separated in the order of their retention points,

the attorney with the lowest points to be discharged first.

~~[(e) Those attorneys who are serving in other positions under Section 67-5-11 shall:]~~

~~[(i) have retention points determined as if they were working for the office; and]~~

~~[(ii) be separated in the order of the retention points as if they were working in the Office of the Attorney General.]~~

~~[(f)]~~ (d) An attorney in a career status who is separated by reason of a reduction in force shall be~~[-(i)]~~ placed on a reappointment register kept by the director of the Department of Human Resource Management for one year~~[-and-]~~.

~~[(ii) offered reappointment to a position in the Office of the Attorney General before any attorney not having a career status is appointed.]~~

Section 19. Section **67-5-207**, which is renumbered from Section 67-5-13 is renumbered and amended to read:

**~~[67-5-13].~~ 67-5-207. Limitations on political activities by career status attorneys.**

(1) ~~[No]~~ (a) An attorney in a career status may not, while in a pay status, be a state or federal officer in any partisan political party organization or in any statewide partisan political campaign.

(b) The attorney~~[-however,]~~ may be an officer or delegate in a partisan political party organization at a county or inferior level or a delegate at a state or national level.

(2) ~~[No]~~ (a) An attorney in career status ~~[shall]~~ may not be a candidate for any partisan political office, but, upon application to the attorney general ~~[he]~~, the attorney shall be granted a leave of absence without pay but without loss of existing seniority to participate in a partisan political campaign either as an officer or as a candidate.

(b) Time spent during the political leave ~~[shall]~~ may not be counted for seniority purposes as being in service.

(c) For the purposes of this section, an attorney is not ~~[deemed]~~ considered to be a candidate until the primary elections have been held.

(3) ~~[No]~~ (a) An attorney in career status may not engage in political activity during the hours of employment~~[-nor may any]~~.

(b) A person may not solicit political contributions from any attorney in career status during hours of employment or through state facilities or in any manner impose assessments on them for political purposes~~[-but nothing]~~.

(c) ~~Nothing~~ in this section [~~shall preclude~~] precludes voluntary contributions to a candidate or a political party.

(4) [~~Partisan~~] (a) The partisan political activity [~~shall~~] of an attorney in career status may not be a basis for employment, promotion, demotion, or dismissal.

(b) Any violation of this section may lead to disciplinary action against the attorney, which may consist of reprimand, suspension, demotion, or termination as determined by the attorney general.

(5) This section [~~shall~~] may not be construed to permit partisan political activity by any attorney in career status who is prevented or restricted from engaging in this political activity by the provisions of any federal act or the rules and regulations promulgated under it.

Section 20. Section **67-5-301**, which is renumbered from Section 67-5-18 is renumbered and amended to read:

### **Part 3. Pornography Complaints Ombudsman**

#### **[67-5-18]. 67-5-301. Pornography Complaints Ombudsman -- Powers.**

(1) As used in this section, "pornography" means material or a performance that meets the requirements of Subsection 76-10-1203(1).

(2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the Office of the Attorney General.

(b) The attorney general shall hire an attorney licensed to practice law in Utah who has knowledge of obscenity and pornography law and, if possible, who has a background or expertise in investigating and prosecuting obscenity and pornography law violations to fill the position.

(c) The person hired to fill the position is an exempt employee.

(d) The attorney general may hire clerks, interns, or other personnel to assist the pornography complaints ombudsman.

(3) The Obscenity and Pornography Complaints Ombudsman shall:

(a) develop and maintain expertise in and understanding of laws designed to control or eliminate obscenity and pornography and the legal standards governing the regulation or elimination of obscenity and pornography;

(b) advise citizens and local governments about remedies to address instances of obscenity and pornography in their communities;

(c) advise local governments about ways to strengthen local laws and ordinances

addressing obscenity and pornography;

(d) advise local governments about strategies to restrict, suppress, or eliminate obscenity and pornography in their communities;

(e) at the request of the attorney general or a local government, assist a local government in investigating and prosecuting state and local laws and ordinances addressing obscenity or pornography;

(f) advise citizens about their options to address specific complaints about obscenity or pornography in their communities;

(g) when requested by a citizen or local government official, arbitrate between citizens and businesses to resolve complaints about obscenity or pornography;

(h) provide information to private citizens, civic groups, government entities, and other interested parties about the dangers of obscenity and pornography, the current laws to restrict, suppress, or eliminate pornography, and their rights and responsibilities under those laws;

(i) in conjunction with Utah's county and municipal prosecuting attorneys:

(i) review Utah's and Idaho's moral nuisance law;

(ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for municipalities and counties to provide an effective mechanism to abate and discourage obscenity and pornography; and

(iii) present the draft to the Legislature's Judiciary Interim Committee before October 25, 2001; and

(j) establish a program to combat Internet pornography and to assist parents in protecting their children from Internet pornography.

**Section 21. Repealer.**

This act repeals:

Section **67-5-11, Attorney accepting appointment to state position exempt from merit provisions -- Reinstatement in career status.**

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**Legislative Review Note**

**as of 12-19-01 9:32 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**